

IRRIGATION
WATER SERVICE AGREEMENT

BETWEEN
ANTELOPE VALLEY-EAST KERN WATER AGENCY
AND

Tejon Ranch Co.

FOR WATER SERVICE

DATED 4-22-75

Irrigation Water Service Agreement Number 75-26

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IRRIGATION
WATER SERVICE AGREEMENT

THIS AGREEMENT, made and entered into this ___ day of _____, 19___, by and between the Antelope Valley-East Kern Water Agency, established by Chapter 2146 of the 1959 Statutes of the State of California, hereinafter referred to as the "Agency", and Sejow Ranch Co., hereinafter referred to as the "Consumer;"

WITNESSETH:

WHEREAS, water is needed within the Agency to supplement existing water supplies; and

WHEREAS, groundwater supplies within the Agency are seriously depleted; and

WHEREAS, the Agency and the State of California entered into an agreement entitled "Water Supply Contract Between the State of California, Department of Water Resources, and Antelope Valley-East Kern Water Agency," dated September 20, 1962, as amended, whereby the State of California will furnish a water supply to the Agency; and

WHEREAS, the Agency desires to make available water under terms and conditions which, as far as practicable and consistent with the ultimate use of water made available pursuant to said Contract and Amendments, shall be fair and equitable; and

WHEREAS, the lands of the Consumer are in need of water for beneficial uses; and

WHEREAS, the Agency is in the process of designing, constructing and operating a water distribution system capable of delivering State Project water

for municipal and industrial uses, as well as substantial quantities thereof for irrigation uses within its boundaries; and

WHEREAS, there is a long-standing overdraft of groundwater supplies within the Agency, and it is in the public interest to reduce that overdraft by all reasonable means possible, including creation of incentives on the part of those who pump groundwater to take imported surface water supplies in lieu thereof, all within the meaning of Section 61 (16) of the Agency law which authorizes the Agency to distribute water to persons in exchange for ceasing or reducing groundwater extractions, and to pay from Agency funds such portion of the cost as will encourage the use of such water in lieu of pumping so long as the person or property within the Agency are directly or indirectly benefitted; and

WHEREAS, the Board of Directors has determined that it is in the best interests of the Agency to sell water for irrigation and replenishment purposes at a rate which will encourage the cessation of pumping water from underground sources, but limiting use of such irrigation water to lands already under cultivation; and

WHEREAS, the policy of this Board of Directors must remain flexible and the cost of water for irrigation and replenishment purposes frequently adjusted to reflect not only the cost to the Agency of delivering water but the effect which said price will have on persons who otherwise will pump water from underground sources; and

WHEREAS, the Consumer desires to contract with the Agency for a water supply for the use and benefit of the Consumer, and for which Consumer will make payment to the Agency upon the terms and conditions hereinafter set forth;

NOW, THEREFORE, IT IS AGREED:

Article 1. Definitions

When used in this Agreement, the following terms shall have the meanings hereinafter set forth:

(a) "Agency" as used herein shall mean Antelope Valley-East Kern Water Agency.

(b) "Agency Law" shall mean the Antelope Valley-East Kern Water Agency Law, Cal. Water Uncodified Acts 9095.

(c) "Agency Surplus Water" shall mean all Project Water surplus to the water demands of Consumers pursuant to Water Service Agreements.

(d) "Agreement" as used herein shall mean this agreement for irrigation water service between Agency and Consumer.

(e) "Agricultural Use" shall mean the same as "Irrigation Use."

(f) "Consumer" as used herein shall mean any public agency, including the United States of America, the State of California, counties, cities, districts, local agencies or political subdivisions of the State of California; corporations, public utility water companies, mutual water companies or persons; or any other entity or individual able to and which does execute an Agreement with the Agency for a water supply; but shall not include any party with whom the Agency may contract to deliver water for a term of years and under special provisions which require the joint use of facilities for the particular benefit of said party and the Agency.

(g) "Irrigation Use" shall mean any use of water in the production of plant crops or livestock for market, including any use incidental thereto.

(h) "Master Contract" shall mean the contract entitled "Water Supply Contract between the State of California Department of Water Resources and the Antelope Valley-East Kern Water Agency," dated September 20, 1962, as amended.

(i) "Project Water" shall mean water made available to the Agency by the State of California pursuant to the terms of the Master Contract.

(j) "Rules and Regulations" shall mean the Rules and Regulations for Distribution of Water, Antelope Valley-East Kern Water Agency, as they may be amended and supplemented from time to time by the Board of Directors of the Agency. The Rules and Regulations set forth additional conditions under which water will be distributed to the Consumer.

(k) "Treatment and Distribution System" means all fixed installations owned and operated by the Agency having the purpose of storage, treatment, conveyance, control, measurement, spreading and delivery of water, or the California Aqueduct wherever the Agency may have a permit for installation and operation of facilities for delivery of water.

(l) "Water Service Agreement(s)" shall mean all water service agreements between the Agency and Consumers for a water supply other than Irrigation Water Service Agreements.

(m) "Year" means the calendar year.

Article 2. Term of Agreement

This Agreement shall become effective on the date first above written and shall remain in effect or until terminated pursuant to Article 9(a) hereof.

Article 3. Relationship to Master Contract, and
Application of Agency Law

(a) Consumer acknowledges having read the Master Contract and having general familiarity with its terms that Agency's ability to supply water is governed by said Master Contract as amended.

(b) Consumer also understands that this Agreement and the rights and obligations of the parties hereunder shall be subject to the Agency Law as amended by the Legislature of the State of California.

Article 4. Delivery of Water

Water delivered pursuant to this Agreement shall be available for irrigation use only to the same extent that the Consumer discontinues pumping groundwater in an equivalent amount, such equivalent cessation of pumping to be determined by the Agency.

Water delivered hereunder will be used only on lands shown on "Exhibit B" attached hereto and incorporated herein by this reference.

Agency will deliver water to Consumer at water service connections in accordance with the conditions and procedures set forth in the Agency Rules and Regulations. By execution of this Agreement, Consumer acknowledges receipt of a copy of the Rules and Regulations and agrees to be bound by them and by any amendments thereto. Agency agrees that amendments to the Rules and Regulations shall not be made without providing Consumer at least 45 days prior written notice of each such proposed amendment and of the meeting of the Board at which such amendment is to be acted upon.

Article 5. Water Rights

In addition to reporting water extractions under the Recordation Act of 1955 (Cal. Water Code Secs, 4999 - 5008), Consumer agrees to report all extractions of ground water to the Agency on an annual basis. Such report shall include, in addition to the information required by the Recordation Act of 1955 and the regulations issued by the State Water Resources Control Board in connection therewith, a statement of the amount of Consumer's cessation or reduction of ground water extractions by reason of his purchase of Project Water under this Agreement.

To the extent and in the amount that Project Water is supplied to Consumer from Agency, that quantity shall be deemed by the Agency to be equivalent to Consumer's right to extract ground water in the event of any general adjudication of ground water rights within the boundaries of the Agency.

The report required under this Article will be filed on a form provided by Agency.

Article 6. Water Service Connections and
Combined Turnouts

Consumer shall make application to Agency for water service connections through which all or a portion of the water to be delivered pursuant to this Agreement shall be delivered to Consumer. Consumer agrees to pay all costs incurred by Agency for the design, construction, inspection, operation and maintenance of any water service connections serving Consumer. Application and payment for water service connections shall be in accordance with the procedures set forth in the Rules and Regulations. After the same have been constructed, Agency shall own the water service connections and all appurtenances thereto. Water service connections and appurtenances do not include any portion of the water delivery system owned, operated and maintained by Consumer.

Water will be furnished through a combined turnout to a group of Consumers only after the Consumers execute an agreement called "Combined Turnout Agreement" satisfactory to Agency. Among other things, this Agreement shall provide for:

- a) Acceptance of delivery of water through the combined turnout;
- b) Granting of mutual water conveyance easements to other Consumers as necessary;
- c) Authorization for one party to represent the group in all matters relating to the Agreement and the Combined Turnout Agreement and apportionment of the costs.

Article 7. Water Orders, Delivery Schedules, and
Use of Water

The Consumer agrees to order water, schedule its delivery, and provide data on its use pursuant to the terms of this Agreement and the Rules and Regulations.

A schedule of the Consumer's requested water deliveries for the first seven years of the term of this Agreement is attached hereto as "Exhibit A." A separate "Exhibit A" shall be made out for each separate water service connection location.

Article 8. Measurement

All water furnished pursuant to this Agreement shall be measured by the Agency at each water service connection with equipment satisfactory to the Agency. Said equipment shall be part of the water service connection owned by the Agency and operated and maintained only by the Agency. Accuracy of water measurement shall be investigated by the Agency in the manner set forth in the Rules and Regulations. The Agency will install, or cause to be installed, backflow prevention devices in connection with such measuring devices to prevent water delivered to the Consumer or other consumers from returning to the Agency's treatment and distribution system.

Article 9. Termination

(a) In the event that the Agency Board of Directors finds that all Project Water is committed to Consumers under Water Service Agreements, or by allocation pursuant to Article 10 hereof, delivery of water hereunder shall be terminated. Agency shall endeavor to provide as much advance notice of such termination as possible, and in any event three months' written notice will be given.

(b) In the event of default by the Consumer in any of the terms of this Agreement or the Rules and Regulations incorporated herein, the Agency may, in its discretion and without prejudice to any other remedy it may have, suspend or terminate water deliveries hereunder. The waiver by Agency of any default shall not operate to waive successive defaults. Should legal action be taken to enforce any terms of this Agreement, the parties hereto agree that the prevailing party shall receive all costs of suit and reasonable attorneys' fees from the losing party.

(c) Consumer expressly agrees that Agency's obligation to serve water hereunder is conditioned upon Agency's ability to construct a distribution system capable of bringing Project Water to the general vicinity of Consumer, and that Agency's obligation to serve water hereunder extends only to Agency Surplus Water, and that neither Agency nor its officers, employees or agents shall be liable for failing to provide water to Consumer or for failing to perform any portion of this Agreement to the extent that such failure is caused by the failure of the State of California to perform under the Master Contract.

Article 10. Shortages of Surplus Water

In the event that Agency does not have sufficient Agency Surplus Water to meet the requirements of all Consumers under Irrigation Water Service Agreements, Consumer agrees that Agency may allocate Agency Surplus Water on an equitable basis as set forth in the Rules and Regulations.

Consumer also agrees that neither the Agency nor any of its officers, employees or agents shall be liable in any way whatsoever for any loss arising from such water shortage.

Article 11. Curtailment of Delivery for
Maintenance Purposes

The Agency may temporarily discontinue or reduce the amount of water to be furnished to the Consumer for purposes of maintaining, repairing, replacing and investigating or inspecting any of the facilities necessary for the furnishing of such water to the Consumer. Insofar as practicable, the Agency will give the Consumer notice in advance of any such discontinuance or reduction, except in emergencies. In the event of such discontinuance or reduction, the Agency will attempt to make available upon resumption of service, to the extent Agency Surplus Water is available, the quantity of water which would have been available to the Consumer in the absence of such discontinuance or reduction.

Article 12. No Responsibility for Distribution
of Water Beyond Water Service
Connections

After such water has passed a water service connection established hereunder, neither the Agency nor its officers, agents or employees shall be liable for the control, carriage, handling, use, disposal, distribution or quality of such water supplied to the Consumer or for claim of damages of any nature whatsoever, including but not limited to property damage, personal injury or death, arising out of or connected with the control, carriage, handling, use, disposal, distribution or quality of such water beyond said water service connection; and the Consumer shall indemnify and hold harmless the Agency and its officers, agents, and employees from any such damages or claims of damages, and including costs of suit and reasonable attorneys' fees incurred in defending against any claims or actions for damages on such account.

Article 13. Water Quality

Consumer agrees that the quality of water delivered by the Agency pursuant to this Agreement shall depend upon the quality of the water furnished to the Agency under the Master Contract. The Agency undertakes no responsibility to Consumer to furnish water pursuant to this Agreement of any particular quality.

Consumer understands that Agency Surplus Water is raw and untreated and is considered to be unfit for human consumption without treatment.

Article 14. Payments

Payments hereunder shall be made in the amount and manner provided in the Agency Rules and Regulations adopted by the Board of Directors. At the time the Board of Directors establishes rates for Agency Surplus Water for the coming year, the Agency shall also estimate the rates to be charged for Agency Surplus Water to be delivered in the second and third succeeding years.

Article 15. Interest on Overdue Payments

Upon each overdue charge to be paid hereunder, Consumer agrees to pay interest at the rate of nine percent per year for each month so delinquent. In no event shall such interest be compounded.

Article 16. Remedies Not Exclusive

Remedies for enforcement of the terms of this Agreement are cumulative rather than exclusive, and shall not be deemed to deprive the party using the same from also using any other remedies provided by this Agreement or by law.

Article 17. Amendments

This Agreement may be amended at any time by mutual written consent of the parties. In amending this Agreement, the parties agree to attempt to maintain substantial uniformity between this Agreement and other Irrigation Water Service Agreements then in effect.

Article 18. Opinions and Determinations

Where this Agreement provides for action to be based upon opinion, judgment, approval, review, or determination of either party hereto, such terms are not intended to permit such opinion, judgment, approval, review, or determination to be arbitrary, capricious, or unreasonable.

Article 19. Waiver of Rights

The waiver of either party of a breach of any provision of this agreement shall not operate as a waiver of any subsequent breach.

Article 20. Notices

All notices that are required either expressly or by implication to be given by any party to the other under this Agreement shall be deemed to have been given and delivered if delivered personally or if enclosed in a properly addressed envelope and deposited in a United States Post Office for delivery by registered or certified mail. Unless and until formally notified otherwise, all notices shall be addressed to the parties at their addresses as shown on the signature page of this Agreement.

Article 21. Assignment,

This Agreement shall not be assigned or transferred by Consumer without the prior written consent of Agency.

IN WITNESS WHEREOF, the parties hereto have executed this

Agreement on the date first above written.

Approved as to Form and
Sufficiency

ANTELOPE VALLEY-EAST KERN
WATER AGENCY
554 West Lancaster Boulevard
Lancaster, California 93534
(805) 942-8439

By *[Signature]*
Attorney for Agency

By: *[Signature]*
President

ATTEST:

By *[Signature]*
Secretary
Antelope Valley-East Kern
Water Agency

CONSUMER:
[Signature]
Signature

Name
P.O. Box 1000
Address
Loker, Calif 93243
805 248-6774
Phone

ANTELOPE VALLEY - EAST KERN WATER AGENCY

SCHEDULE NO. _____

REQUESTED 7-YEAR IRRIGATION WATER DELIVERY

for

Tejan Ranch Co

(Name of Consumer)

(Service Connection)

(Acre-Feet per Month)

Sheet _____ of _____

	1975	1976	1977	1978	1979	1980	1981
January		500					
February		500					
March		700					
April		800					
May		800					
June		800					
July		900					
August		700					
September		600					
October		500					
November		400					
December		300					
TOTAL		7500					

Submitted by *Thomas R. [Signature]* (Name) *Vice Pres.* (Title) *Apr. 23, 1975* (Date)

FOR APPROVED: (Initial Year Only)

AGENCY _____ As submitted above
USE _____ As amended above

(General Manager)

(Date)

" EXHIBIT B "

Map showing lands upon which irrigation water will be used.